

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
WEST WATERWAY LUMBER COMPANY,)
Appellant,)
vs.)
STATE OF WASHINGTON,)
DEPARTMENT OF ECOLOGY,)
Respondent.)

PCHE No. 203

FINDINGS OF FACT,
CONCLUSIONS AND ORDER

This matter is the appeal of a \$500.00 civil penalty invoked under RCW 90.48.350 for an alleged oil spill violation. It came before two members of the Pollution Control Hearings Board (Judge Matthew W. Hill, presiding, and Walt Woodward) in the King County Courthouse, Seattle, at 9:30 a.m., November 30, 1972.

Appellant appeared through its attorney, Milton C. Smith, and respondent through Charles W. Lean, Assistant Attorney

1 General. Richard Reinertsen, Olympia court reporter, recorded
2 the proceedings.

3 Witnesses were sworn and testified. Exhibits were
4 offered and admitted. Counsel made closing arguments.

5 On the basis of testimony heard, exhibits examined
6 and closing arguments by counsel, the Pollution Control
7 Hearings Board prepared Proposed Findings of Fact, Conclusions
8 and Order which were submitted to the appellant and respondent
9 on January 23, 1973. Having considered the exceptions filed
10 by the respondent and appellant to the Proposed Findings,
11 Conclusions and Order, the Pollution Control Hearings Board
12 adheres in substance to its proposed decision with certain
13 changes and additions, and makes and enters the following:

14 FINDINGS OF FACT

15 I.

16 The SIRIUS, a former Navy vessel purchased by appellant
17 in April, 1971 for scrapping, was flooded with water during
18 a fire in January, 1972 and capsized on its port side in
19 West Waterway, Seattle, King County, at its West Waterway
20 Lumber Company moorage. Shortly after this incident, respondent
21 advised appellant that it should have a standby boom to
22 contain oil which might escape from the overturned hull.

23 II.

24 In the morning of June 26, 1972 from five to ten gallons
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26 FINDINGS OF FACT,
27 CONCLUSIONS AND ORDER

1 of black oil escaped into West Waterway from an open hatch
2 near the stern of the SIRIUS. Appellant was contacted by
3 the United States Coast Guard relative to the oil and at
4 noon on that day employees of appellant began shoveling
5 an absorbent material into the oily water.

6 III.

7 On June 27, 1972, with an iridescent film and numerous
8 small patches of oil on the surface of West Waterway near
9 the stern of the SIRIUS, appellant's employees used a dispersant
10 chemical on the water surface until warned by respondent
11 that this was unlawful. Respondent advised appellant on
12 June 27, 1972 to remove and contain the oil.

3 IV.

14 On June 28, 1972, respondent contacted appellant several times
15 relative to obtaining a boom to contain the oil which spill was in
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evidence near the stern of the SIRIUS. Late that afternoon, after being warned by respondent that respondent would rent and install a boom and charge its costs to appellant, appellant called Marine Oil Pick-up Service, which installed a boom at 5:30 p.m. Appellant installed its own boom on June 29, 1972.

V.

RCW 90.48.320 makes it unlawful for oil to enter waters of the state from a ship "regardless of the cause of entry." RCW 90.48.325 requires any person owning or controlling oil which is in violation of RCW 90.48.320 "immediately (to) collect and remove" the oil; this section also empowers respondent to prohibit or restrict the uses of chemical dispersants. RCW 90.48.350 authorizes respondent to levy a civil penalty up to twenty thousand dollars for each intentional or negligent discharge of oil.

VI.

Appellant did not notify an appropriate state agency of the oil escaping from the stern of the SIRIUS on June 26, 1972.

VII.

On September 18, 1972 respondent, in its Docket No. DE 72-155, found that appellant was in violation of Chapter 90.48 RCW and assessed a civil penalty of five hundred dollars in connection therewith. That penalty is the subject of this appeal.

From these Findings of Fact, the Pollution Control Hearings Board comes to these

1 CONCLUSIONS

2 I.

3 Appellant was in violation of Chapter 90.48 RCW in that it (a)
4 permitted oil to escape into waters of this state from a ship under
5 its control on June 26, 27 and 28, 1972; (b) did not notify the
6 appropriate state agency of the escaping oil, and (c) did not
7 immediately contain the oil.

8 II.

9 Appellant's failure to contain oil escaping from the SIRIUS for
10 nearly three days in violation of its statutory duty to "immediately"
11 contain the oil constitutes negligence, which permitted the continued
12 entry of oil into the waters of the state for that time period.

13 III.

14 As to the reasonableness of the five hundred dollar civil penalty
15 invoked in this matter, the importance of this "small" oil spill must
16 be weighed. The public policy of this state (90.48.010 RCW) is to
17 "insure the purity of all waters" not only for "public health and
18 public enjoyment" but also for the "propagation and protection of
19 wildlife, birds, game, fish and other aquatic life." Any oil spill
20 violates that policy.

21 In view of this, the instant civil penalty is reasonable and proper.

22 Therefore, the Pollution Control Hearings Board makes this

23 ORDER

24 The appeal is denied, and appellant is directed to pay to
25 respondent the total civil penalty of five hundred dollars invoked
26 under Docket No. DE 72-155.

27 FINDINGS OF FACT,
CONCLUSIONS AND ORDER

1 DONE at Olympia, Washington this 6th day of March, 1973.

2 POLLUTION CONTROL HEARINGS BOARD

3 *Walt Woodward*

4 WALT WOODWARD, Chairman

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6 W. A. GISSBERG, Member

7 *James T. Sheehy*

8 JAMES T. SHEEHY, Member

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26 FINDINGS OF FACT,
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